

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Appl. No. : 10/522,347
Confirmation No. : 6321
Applicant : Leonard E. Speers, et al.

Filed : January 24, 2004
Title : CONVEYOR WITH COGGED
BELT AND ROLLER
SUPPORT RAIL

I hereby certify that this correspondence is being deposited with the US Postal Service, "Express Mail Post Office to Addressee" service under CFR 1.10, express mailing label no. ED367361830US on the date of my signature and is addressed to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Diane L. Stout
Signature Diane L. Stout
02/13/06
Date of Signature

TC/A.U. : Unknown
Examiner : Unknown

Docket No. : 016276-9079

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF MARK A. USSAI

Sir:

I, Mark A. USSai, hereby declare:

1. I am an attorney with the law firm of Michael Best & Friedrich, LLP, and in that capacity represent Blaw-Knox Construction Equipment Corporation ("Blaw-Knox"), a division of the Ingersoll-Rand Company ("Ingersoll-Rand").

2. Blaw-Knox is the Assignee-in-interest of the invention shown and claimed in the above-identified patent application.

3. On information and belief, the invention shown and claimed in the above-identified patent application was conceived by the four named co-inventors, including the following individual:

Sergio Olguin
101 E. Huitt Lane

Euless, Texas 76040

4. I drafted a provisional patent application entitled "Conveyor with Cogged Belt and Roller Support Rail", from which the present application claims priority, based upon written information, sketches, and drawings received from the primary inventor, Mr. Leonard Speers, and several telephone conversations between myself and Mr. Speers. The draft provisional patent application was sent to and approved by all the inventors, including Mr. Olguin. I filed the provisional patent application on July 22, 2002 with the United States Patent Office.

5. Prior to the one year anniversary date of the filing of the noted provisional patent application, I prepared a draft of a non-provisional patent application based on the disclosure of U.S. Provisional Patent Application No. 60/397,864. I sent the draft non-provisional patent application to Mr. Speers for review, and he and all the other co-inventors, including Mr. Olguin, reviewed and approved the patent application. The non-provisional patent application was then filed as a PCT patent application with the U.S Receiving Office on July 22, 2003 and was subsequently assigned the Application Serial No. PCT/US0322737.

6. An Invitation to Correct Defects in an International Application (Form PCT/R)/106) was issued by the U.S. Receiving Office on August 25, 2003. Due to an oversight during document preparation, the primary inventor, Mr. Leonard Speers, was designated as an "Applicant and Inventor". To correct this error, I determined that a power of attorney document should be signed by each inventor in order to appoint myself and other members of Micheal Best & Friedrich, as agents for the PCT Patent application.

7. A power of attorney document was prepared for each of the four named inventors, and was sent to the Engineering manager responsible for this application, Mr. Michael Scotese of Ingersoll-Rand, Shippensburg. Mr. Scotese informed me by telephone that Mr. Olguin had been terminated from employment with Blaw-Knox on September 5, 2003 and asked me to contact Mr. Olguin directly.

8. I sent a letter to Mr. Olguin on October 1, 2003, which included a copy of the Power of Attorney document and a request for Mr. Olguin to sign and return the document by October 13, 2003, which is attached as Exhibit A. These documents were sent by Federal Express delivery service.

9. Mr. Olguin received the documents listed in statement 8 on October 2, 2003 as evidenced by the Federal Express Trace Receipt enclosed as Exhibit B.

10. On October 3, 2003, Mr. Olguin gave me a telephone call to discuss the documents which he had received the day before. Mr. Olguin asked me whether he would be getting an invention disclosure award of two hundred dollars (\$200), which is customarily granted to Ingersoll-Rand employees upon the filing of a patent application. I informed Mr. Olguin that the invention disclosure award program is discretionary and not granted to persons no longer employed with Ingersoll-Rand. Mr. Olguin then said to me that he did not see why he should sign the Power of Attorney document and that he "needed to think about-it" and that he "would get back to me".

11. As Mr. Olguin had not returned the Power of Attorney document or otherwise contacted me, on October 21, 2003 I instructed my secretary, Ms. Rosemary Hann, to place a telephone call Mr. Olguin at his listed phone number, 817-685-2460, and inquire as to his decision on signing the Power of Attorney document. Ms. Hann told me that she called the noted telephone number, was unable to speak with anyone, and instead left a message. Ms Hann told me that her message inquired as to Mr. Olguin's decision regarding the Power of Attorney document and requested that Mr. Olguin return her telephone call or to call Mr. Mark Ussai. Ms. Hann again placed a telephone call to the noted telephone number on October 27, 2003, and she informed me that the telephone rang well over ten times and that it appeared to her that Mr. Olguin's answering machine had been turned off.

12. On information and belief, our firm never received the signed Power of Attorney Form from Mr. Olguin that was received by him on October 2, 2003.

13. After Ms. Hann's second attempt at contacting Mr. Olguin by telephone as described above in statement 11, I came to believe that Mr. Olguin did not intend to cooperate at that time and that I would not receive an executed copy of the Power of Attorney document sent to him, based on the facts outlined above.

14. As an executed Power of Attorney document from Mr. Olguin was never received, a Response to the Invitation to Correct Defects from the U.S. Receiving Office was not filed for the above-noted PCT Patent application. I decided to wait until the filing of the national stage patent application to again contact Mr. Olguin and attempt to get him to sign the required Declaration document therefor, in the hope that Mr. Olguin would reconsider signing the documents after a passage of time.

11. A U.S. national stage patent application was filed on January 24, 2005 under 35 U.S.C. 371 claiming priority to PCT Application No. PCT/US2003/022727. The U.S. National Stage patent application was assigned the application serial number of 10/522,347.

12. On July 11, 2005, a Notice of Missing Parts document was received from the U.S. Patent Office, in which it was indicated that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) was required to be furnished to the U.S. Patent Office. Declaration and assignment documents were prepared for each of the four listed co-inventors, including Mr. Olguin.

13. On September 30, 2005, I sent a letter to Mr. Olguin at the address listed in statement 3 above, the only address of record known to Blaw-Knox, which included copies of the Declaration and Assignment documents for U.S. Patent Application No. 10/522,347, this letter being attached as Exhibit C. In the September 30th letter, I requested that Mr. Olguin sign and return the documents to me using an enclosed envelope with prepaid postage. These documents were sent by UPS Next Day delivery service and were delivered at the noted address on October 3, 2005 as evidenced by the "Tracking Receipt" document generated by the UPS website and attached as Exhibit D.

14. On information and belief, our firm has not received the signed Declaration and Power of Attorney Form from Mr. Olguin that was sent to him on September 30, 2005.

15. In order to ensure that Mr. Olguin actually received the required Declaration document, on October 3, 2005, I sent Mr. Olguin another letter to the address listed in statement 3 above with another set of Declaration and Assignment documents for U.S. Patent Application No. 10/522,347, this letter being attached as Exhibit E. The letter of October 3, 2005 was sent by UPS Next Day delivery service with a Delivery Confirmation signature requirement, and several attempts to deliver the documents were made before the set of documents was returned to me on October 14, 2005, as evidenced by the "Tracking Receipt" document generated by the UPS website and attached as Exhibit F.

15. As the documents from the first letter had not been received and the second letter was undeliverable, I placed a telephone call on November 2, 2005 to the Mr. Olguin at the last known telephone contact number for Mr. Olguin, specifically 817-685-2460. A woman answered the telephone and upon my request to speak with Sergio Olguin, she informed me that Mr. Olguin does not live there anymore. I then asked her if she had a telephone number where I could reach him, and she told me that she did not know where he is.

17. I then spoke with Mr. Speers of Blaw-Knox shortly after my phone call of November 2, 2005 and Mr. Speers told me that he had remained on friendly terms with Mr. Olguin after Mr. Olguin's termination from Blaw-Knox. Mr. Speers said that he would make inquiries with other associates of Mr. Olguin to attempt to find Mr. Olguin's present contact information. In January 2006, Mr. Speers contacted me by telephone to provide me with information he had learned from a mutual associate of Mr. Speers and Mr. Olguin. According to this person, Mr. Olguin was presently incarcerated in the state of Texas and that I could find the address of the facility at which Mr. Olguin was being held by contacting the Texas Department of Criminal Justice.

18. I contacted the Texas Department of Criminal Justice by telephone on January 18, 2005 and obtained the following address for Mr. Olguin:

Mr. Sergio Olguin
TDC# 137313
GURNEY Unit
6 Miles South of Tennessee Colony of FM 645
Tennessee Colony, TX 75861

19. I sent a letter to Mr. Olguin at the address listed in statement 18 on January 19, 2006, with enclosed copies of the Declaration and Assignment documents, in which I again requested that Mr. Olguin sign and return the documents using an enclosed prepaid envelope, as shown in Exhibit G. These documents were sent by UPS Next Day Air delivery service, and were received at the Gurney Prison facility on January 20, 2006 as indicated in the attached UPS tracking report attached hereto as Exhibit H.

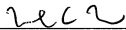
20. As the executed Declaration was not received as of January 26, 2006, on that day I sent a second letter to Mr. Olguin at the above-noted address and again enclosed a copy of the Declaration document and requested that the document be signed and returned in the enclosed prepaid envelope, as attached as Exhibit I. These documents were sent by UPS Next Day Air delivery service, and were received at the Gurney Prison facility on January 27, 2006 as indicated in the attached UPS tracking report attached hereto as Exhibit J.

21. As the executed Declaration was not received as of February 3, 2006, I sent a third letter to Mr. Olguin at the above-noted address and again enclosed a copy of the Declaration document and repeated my request that the document be signed and returned in the enclosed prepaid envelope, as attached as Exhibit K. These documents were sent by UPS Next Day Air delivery service, and were received at the Gurney Prison facility on February 6, 2006 as indicated in the attached UPS tracking report attached hereto as Exhibit L.

22. On information and belief, our firm has not received a signed Declaration and Power of Attorney Form from Mr. Olguin after sending him three copies of the Declaration document at his current address at the Gurney Prison facility, each copy of the document being accompanied by a request to sign and return the form by means of an included prepaid envelope.

23. I believe that Mr. Olguin is an uncooperative inventor who refuses to sign the required Declaration and Power of Attorney document in view of the termination of his employment with the assignee in September 2003 and his discontent expressed to me over his not receiving a discretionary monetary award for the patent application, as discussed in statement 10 above.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Mark A. Ussai

February 13, 2006

Date